In the High Court of Judicature at Madras

Dated 16.03.2005

Coram

The Honourable Mr.Justice S.R.SINGHARAVELU

Criminal Revision Petition No.820 of 2004

and Crl.M.P.No.5725 of 2004

1. Rajesh Kumar Bagmar
2. Parasmal Bagmar
3. Shantha Kawar ..Petitioners
4. Vinaychand

..vs..

1. State by
   Inspector of Police,
   W-1, All Women Police Station,
   Thousand Lights,
   Chennai.

2. Nagina @ Swathi ..Respondents

Criminal Revision Petition under sections 397 and 401 of Criminal Procedure Code filed against the order passed by the Chief Metropolitan Magistrate, Egmore, Chennai-8 dated 06.04.2004 made in Crl.M.P.No.115 of 2004 in C.C.No.14285 of 2003.

For Petitioners : Mr.K.S.Rajagopalan
For Respondents : Mr.A.N.Thambidurai,
Govt.Advocate (Criminal Side)for R1

Mr.A.Raghunathan for R2

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ORDER

This Criminal Revision Petition arises against the order dated 06.04.2004 in Crl.M.P.No.115 of 2004 in C.C.No.14285 of 2003 by the learned Chief Metropolitan Magistrate, Egmore, Chennai.

2. Petitioners are accused 1 to 3 and 5 in C.C.No.14285 of 2003 pending before the Court of Chief Metropolitan Magistrate, Chennai for offences under sections 498A, 406 IPC and section 4 of Dowry Prohibition Act. Second respondent is the defacto complainant at whose instance the complaint was preferred which culminated into the above calendar case. The complaint was lodged on 20.08.2001 by the second respondent wife against the 1st petitioner/ 1st accused/husband and her in-laws for alleged cruelty and demand of dowry. Initially, there was no proper action taken upon her complaint and so, the second respondent/ wife waited till January 2002 to move for a transfer of the investigation from the file of All Women Police Inspector-Mrs.Rajeswari to some other officer. Again on 01.02.2002, she wrote a letter to the Deputy Commissioner of Police complaining inaction. It is only thereafter, investigation was conducted and charge sheet was filed.

3. Based upon a grievance that no proper investigation was conducted and complaining the fact that although the second respondent's mother and maternal uncle gave statement before the police, their names were not found in the list of prosecution witnesses and apprehending that the prosecution may not be conducted to her satisfaction, this respondent preferred to file a petition under section 302(2) of Cr.P.C., for conducting prosecution by herself through her counsel. That was allowed by the learned Chief Metropolitan Magistrate, which is sought to be attacked in this revision.

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4. Before ever we proceed further, mention has to be made about sections 225, 301 and 302 Cr.P.C.

> 225. Trial to be conducted by Public Prosecutor:- In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.
>
> 301. Appearance by Public Prosecutors:- (1)

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The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

302. Permission to conduct prosecution:-
(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than the police officer below the rank of Inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission;

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.

5. Counsel for the revision petitioners submitted that the State alone is empowered to conduct prosecution and if private pleaders are allowed to do so, they may try to wreck vengeance and the entire trial may be fought like a battle. In this connection, the following observations made in the case reported in THAKUR RAM AND OTHERS ..vs.. THE STATE OF BIHAR (AIR 1966 SC 911) were relied on.

"The criminal law is not to be used as an instrument of wrecking private vengeance by an aggrieved party against the person, who according to that party, had caused injury to it. Barring a few exceptions, in criminal matters the party who

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is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book ".

6. Counsel for the second respondent contended that the private pleader even if he has got an object of wrecking vengeance, could not achieve the same as entire trial is controlled by the Presiding Officers. For this purpose, the following observation made in the case reported in VARADA RAMA MOHANA RAO ..VS.. STATE OF ANDHRA PRADESH ((2004) 4 SCC 427) was relied upon.

"His personal opinion has no place in the decision-making process of the Court. At the most he may present his case with vehemence and with a touch of vengeance but this would not in any manner either influence the decision-making process of the court or would cause any prejudice to the accused in his defence. This, however, does not mean that we approve the fact that a person who is admittedly on bad terms with the accused should be appointed as a prosecuting counsel unless for good reasons. May be, in this case in view of the strained relationship between the parties, the learned prosecutor could have rescued himself but that was a choice left entirely to him and that by itself does not prejudice the trial in any manner".

7. Again, counsel for the revision petitioners pointed out that the duty of the Public Prosecutor is to act fairly and not merely to obtain conviction by any means, fair or foul. He relied upon the following observation made in SHIV KUMAR ..VS.. HUKAM CHAND (1999 SCC (Cri)1277).

" A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting

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prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle or conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the accused. Even if the defence counsel overlooked it, the Public Prosecutor has the added responsibility to bring it to the notice of the court if it comes to his knowledge. A private counsel, if allowed a free hand to conduct prosecution, would focus on bringing the case to conviction even if it is not a fit case to be so convicted. That is the reason why Parliament applied a bridle on him and subjected his role strictly to the instructions given by the Public Prosecutor ".

8. That was a case for an offence under section 304-B IPC, which is triable by Court of Session in which even section 225 Cr.P.C. becomes applicable, whereby conduct of the prosecution shall be made only by the Public Prosecutor. But inasmuch as the facts before us deal with offences under sections 498A, 406 IPC and Section 4 of Dowry Prohibition Act, they are triable by First Class Judicial Magistrate and not by Sessions Court. Unlike the facts cited in the case reported in 1999 SCC (Crl.) 1277, (cited supra) wherein the applicable section is 225 Cr.P.C., what we are concerned here is regarding offences triable by the First Class Judicial Magistrate, where the conduct of investigation shall be governed neither by section 225 nor 302 Cr.P.C., but under section 301 Cr.P.C.

9. It is, therefore, the principles enunciated in the case reported in SUBBULAKSHMI ..VS.. STATE (INSPECTOR OF POLICE, DOWRY CELL, CRIME BRANCH, EGMORE, MADRAS) AND OTHERS (1992 MLJ (Crl.) 673) are also not applicable here in so far as it deals only with section 301 Cr.P.C. which applies to every Court in general. It is in that context of application of section 301 Cr.P.C., the following observation was made;

"In view of what has been stated above, it goes without saying that the resultant position is that

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the Public Prosecutor or the Assistant Public Prosecutor in charge of the case alone can conduct the prosecution and address arguments and in case, a pleader is engaged privately by the third party to conduct such prosecution, he can act under the direct control and supervision of the Public Prosecutor or the Assistant Public Prosecutor, as the case may be, in the sense of rendering assistance and such assistance cannot be construed to give him an unfettered right of examination of witnesses-examination-in-chief, cross-examination and re-examination, depending upon the exigencies of the situation-besides a right of audience and if at all any right is inhering in favour of such a private pleader, it is only to submit his written arguments".

10. As mentioned earlier, the given facts deal with offence triable by Judicial First Class Magistrate and in such a situation, the observation found in J.K.INTERNATIONAL ..vs.. STATE (GOVT.OF NCT OF DELHI) AND OTHERS (2001 SCC (Crl.) 547) can be made applicable as that case also deals with offences triable by Judicial First Class Magistrate. The observation made thereunder is as follows:

" The private person who is permitted to conduct prosecution in the Magistrate's Court can engage a counsel to do the needful in the court on his behalf. Further if a private person is aggrieved by the offence committed against him or against anyone in whom he is interested he can approach the Magistrate and seek permission to conduct the prosecution by himself. It is open to the Court to consider his request. If the court thinks that the cause of justice would be served better by granting such permission the court would generally grant such permission. Of course, this wider amplitude is limited to Magistrates' Courts, as the right of such private individual to participate in the conduct of prosecution in the Sessions Court is very much restricted and is made subject to the control of the Public Prosecutor".

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11. In this case also, there was apprehension in the mind of the second respondent that the investigation was not conducted properly and that the Additional Public Prosecutor can only act according to the records and materials gathered during the course of such investigation and therefore, there may be failure of justice. Strengthening the view, one circumstance was pointed out that despite recording the statement from the mother and maternal uncle of second respondent / wife in the course of investigation, they were not included in the list of witnesses on the side of prosecution. Whether the grievance of the second respondent is true or not, the apprehension was shown to be reasonable. It is in that event, the Court thinks that the cause of justice would be served better by granting such permission, the Court would generally grant such permission as was mentioned in 2001 SCC (Crl.) 547 (cited supra). When section 302 Cr.P.C. permits the conduct of prosecution by the complainant personally or by a pleader and when permission could be granted for that purpose by the Magistrate and when the reasonings are also found convincing, then there is no ground to set aside the said impugned order.

12. For the reasons stated above, the Criminal revision petition is dismissed and the order passed by the trial Court is confirmed. Consequently, Crl.M.P.No.5725 of 2004 is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Chief Metropolitan Magistrate,
   Egmore,
   Chennai.

2. Inspector of Police,
   W-1, All Women Police Station,
   Thousand Lights,
   Chennai.

3. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr. A. Raghunathan, Advocate SR.No.12582

HPR(CO)
KAA 22.03.05

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